



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 235, 237, and 252**

**RIN 0750-AI22**

**Defense Federal Acquisition Regulation Supplement: Animal Welfare (DFARS Case 2013-D038)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to comply with the Department of Defense Instruction that addresses the use of animals in DoD programs.

**DATES:** Effective [Insert date of publication in the **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Ms. Janetta Brewer, telephone 571-372-6104.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the **Federal Register** at 79 FR 35717 on June 24, 2014, to revise DFARS 235.072, subpart 237.1, and the clause at 252.235-7002, Animal Welfare, to be consistent with the Department of Defense Instruction (DoDI) 3216.01 entitled "Use of Animals in DoD Programs," which governs DoD

supported research, development, test, and evaluation or training that uses vertebrate animals, and the acquisition of animals. One respondent submitted two comments on the proposed rule.

## **II. Discussion and Analysis**

DoD reviewed the public comments in the development of the final rule, and one change was made. A discussion of the comments is provided below.

Comment: The respondent recommended that DFARS section 237.17X be revised to prescribe use of the clause at 252.235-7002.

Response: The clause at 252.235-7002, Animal Welfare, is prescribed within section 235.072. FAR drafting conventions prohibit a clause from being prescribed in more than one section. Section 237.17X, however, is amended to provide a cross reference to the clause and its prescription. Section 237.17X is 237.175 in the final rule.

Comment: The respondent recommended that the clause at DFARS 252.235-7002, Animal Welfare, be revised to read that it has been prescribed in sections 235.072(a) and 237.17X.

Response: No changes were made in response to this comment. As discussed in the response to the prior comment, FAR drafting conventions prohibit a clause from being prescribed in more than one section.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to comply with the Department of Defense Instruction (DoDI) that addresses the use of animals in DoD programs. DoDI 3216.01, Use of Animals in DoD Programs, governs DoD supported research, development, test, and

evaluation or training that uses vertebrate animals, and the acquisition of animals.

The data obtained from the Office of Assistant Secretary of Defense for Research Development Animal Research Development Test & Evaluation Protection Programs reflect an estimate of 50 new DoD research, development, test, and evaluation contracts awarded in Fiscal Year 2012 that involved animal testing. Forty-eight of these contracts were awarded to small business entities, which could be impacted by this rule. However, any cost burden caused by this rule will be outweighed by the effect of the rule preventing cruelty to animals.

No public comments were received in response to the initial regulatory flexibility analysis published in the proposed rule.

The rule does not contain any reporting or recordkeeping requirements and does not require contractors to expend significant cost or effort. There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities.

## **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 235, 237, and 252**

Government procurement.

**Manuel Quinones**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 235, 237, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 235, 237, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

2. In section 235.072, revise paragraph (a) to read as follows:

**235.072 Additional contract clauses.**

(a) Use a clause substantially the same as the clause at 252.235-7002, Animal Welfare, in solicitations and contracts involving research, development, test, and evaluation or training that use live vertebrate animals.

\* \* \* \* \*

**PART 237—SERVICE CONTRACTING**

3. Add section 237.175 to read as follows:

**237.175 Training that uses live vertebrate animals.**

Use the clause at 252.235-7002, Animal Welfare, as prescribed in 235.072(a), when contracting for training that will use live vertebrate animals.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Revise section 252.235-7002 to read as follows:

##### **252.235-7002 Animal Welfare.**

As prescribed in 235.072(a), use the following clause:

##### **ANIMAL WELFARE (DEC 2014)**

(a)(1) The Contractor shall register its research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR subpart C, and section 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1 through 4 for the duration of the activity. The Contractor shall have its proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs, by a DoD Component Headquarters Oversight Office. The Contractor shall furnish evidence of such registration and approval to the Contracting Officer before beginning work under this contract.

(2) The Contractor shall make its animals, and all premises, facilities, vehicles, equipment, and records that support animal care available during business hours and at other times mutually

agreeable to the Contractor and the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the Contracting Officer, to ascertain that the Contractor is compliant with 7 U.S.C. 2131-2159 and 9 CFR parts 1 through 4.

(b) The Contractor shall acquire animals in accordance with DoDI 3216.01, current at time of award

(<http://www.dtic.mil/whs/directives/corres/pdf/321601p.pdf>).

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and policies and procedures of the Department of Defense (see 7 U.S.C. 2131 *et seq.*, and 9 CFR subchapter A, parts 1 through 4, DoDI 3216.01, Army Regulation 40-33/SECNAVINST 3900.38C/AFMAN 40-401(I)/DARPAINST 18/USUHSINST 3203). The Contractor shall also comply with DoDI 1322.24, Medical Readiness Training, if this contract includes acquisition of training.

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and, if applicable, removal of the Contractor's name from the approved vendor list for live animals used in medical training.

(e) The Contractor may request registration of its facility by contacting USDA/APHIS/AC, 4700 River Road, Unit 84, Riverdale, MD 20737-1234, or via the APHIS Animal Care website at:

<http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare>.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts involving research, development, test, and evaluation or training that use live vertebrate animals.

(End of clause)

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